

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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State of Minnesota, by Michael Campion,  
its Commissioner of Public Safety,

Plaintiff,

Court File No. 0:08-cv-00603-DWF-AJB

v.

CMI of Kentucky, Inc.,  
A Kentucky Corporation,

Defendant,

**MEMORANDUM IN SUPPORT OF  
MOTION FOR ACCESS TO  
MATERIALS NECESSARY TO  
PERFORM A MEANINGFUL  
SOURCE CODE REVIEW**

and

Minnesota Society for Criminal Justice on  
behalf of those Authorized Minnesota  
Litigants within the Source Code  
Coalition.

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**ARGUMENT**

The Minnesota Society for Criminal Justice (MSCJ) was granted amicus curiae status in the above-entitled matter. Subsequent to this Court's approval of the Consent Decree and Permanent Injunction filed on July 16, 2009 (hereinafter "Consent Decree") the MSCJ formed the Minnesota Source Code Coalition (hereinafter "Coalition"). The Coalition is a group of approximately two hundred private criminal defense attorneys and state public defenders who have pooled their efforts and resources to conduct a review and challenge to the Intoxilyzer

5000EN's source code. This review is being conducted on behalf of Authorized Minnesota Litigants as that status is defined by the Consent Decree filed on July 16, 2009. The Coalition hereby moves the Court pursuant to the Consent Decree for an Order granting access to materials that are reasonably necessary to perform a meaningful source code review and the award of reasonable attorney fees and costs.

This Court has retained jurisdiction over the above-captioned matter since the Consent Decree was filed. One specific reason for retaining jurisdiction was to facilitate meaningful access to the source code in future unanticipated circumstances.

That situation has arisen. Currently, the Coalition, on behalf of Authorized Minnesota Litigants, has reached an impasse with CMI, Inc. of Kentucky over several pieces of information that are each reasonably necessary to perform meaningful review of the source code. *See* Letter to Judge Frank and Judge Abrams, dated January 25, 2010, included as Exhibit 1.

All told, there are thirteen separate and unique pieces of information that the Coalition believes are reasonably necessary for their experts to have prior to any travel to Kentucky. *See* Affidavit of Mark Lanterman, dated February 18, 2010, included as Exhibit 2. Of these thirteen items, the Coalition understands that CMI will agree to disclose five of them without the need for a Court Order. *See* Attachment to Affidavit of Mark Lanterman, included as Exhibit 2-b. However,

the remaining eight items have been and continue to be denied to the Coalition and its retained experts *Id.*

The Coalition has every intention of proceeding with analysis of the source code under the terms of the Consent Decree; however, such analysis can not be properly commenced unless and until the thirteen listed items have been provided to its experts.

Clearly the spirit of the Federal Rules of Civil Procedure and the Minnesota Rules of Criminal and Civil Procedure allow for a broad scope of discovery. *See e.g.* Fed. R. Civ. P. 26 (b)(1). The Coalition is unnecessarily spending attorneys' fees, expert fees and precious time that is delaying a meaningful review of the source code at CMI headquarters in Kentucky.

### **CONCLUSION**

Because the parties have not been able to reach agreement on these thirteen pieces of reasonably necessary information, the Coalition has no choice but to invoke the continuing jurisdiction of this Court to obtain an Order compelling CMI, Inc. of Kentucky to disclose and provide this information. Because each item of information requested by the Coalition is reasonably necessary to provide a meaningful review of the source code, it respectfully requests that the Court issue an Order granting access to these materials as soon as feasible and assessing appropriate attorneys' fees and costs.

RAMSAY LAW FIRM, P.L.L.C.

Dated: February 19, 2010

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